

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JOHN OLIVER EDWARDS,

Plaintiff,

v.

IOF FORESTERS SEVERANCE PAY
PLAN AND SUMMARY PLAN
DESCRIPTION FOR FIELD DISTRICT
MANAGEMENT EMPLOYEES OF THE
INDEPENDENT ORDER OF FORESTERS
WHO WORK IN U.S. FIELD OFFICES

and

THE INDEPENDENT ORDER OF
FORESTERS,

Defendants.

Case No. 1:01-cv-582

Judge Weber

Magistrate Judge Hogan

**DEFENDANT'S MOTION TO
DISMISS IT'S
COUNTERCLAIMS**

Defendant, The Independent Order of Foresters ("IOF"), moves to dismiss its counterclaims against Plaintiff, Mr. John Edwards, and seeks an order authorizing said dismissal pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure.

MEMORANDUM IN SUPPORT

On August 31, 2001, Plaintiff John Edwards filed a multi-count ERISA complaint seeking severance benefits. During discovery, the IOF learned that the Plaintiff had sold competing products for other insurance companies while employed by the IOF. The IOF then filed counterclaims against Plaintiff for breaching his employment contract with the IOF and for breaching his duty of loyalty to the IOF.

Last week, this Court granted the IOF's motion for summary judgment on Plaintiff's ERISA claims. Had Plaintiff's ERISA claims gone to trial, the IOF was prepared to bring witnesses from other states and Canada to testify in its defense. One or more of these witnesses

would have also been used to establish Plaintiff's liability on the counterclaims, at little extra cost to the IOF. Among other things, summary judgment on the ERISA claims changes this equation and the IOF has decided to seek dismissal of its counterclaims.

This motion is filed promptly after the Court's decision to grant summary judgment but the IOF realizes that the trial date is in mid-July. In light of this fact, and the fact that Plaintiff has expressed his intent to oppose this motion, the IOF is willing to dismiss its counterclaims with prejudice. This eliminates any prejudice to the Plaintiff and granting this motion is in the best interest of judicial economy.

Given that the counterclaims are scheduled for trial on July 12, 2004 and this motion, if granted, will obviate the need for a trial, the IOF respectfully requests that the Court set a schedule for considering this motion on an expedited basis or postpone the trial date until the Court rules on this motion.

WHEREFORE, Defendant IOF respectfully requests that the Court issue an order granting the IOF's motion to dismiss its counterclaims with prejudice.

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was electronically filed on June 22, 2004. By virtue of operation of the Court's CM/ECF system, notice of this filing will be sent to Robert Armand Perez, Sr., Counsel for Plaintiff, The Perez Law Firm Co., L.P.A., 7672 Montgomery Road, Suite 378, Cincinnati, Ohio 45236.

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